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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly  
situated,

Plaintiffs,

v.

SUTTELL & ASSOCIATES, *et. al.*

Defendants.

Case No.: CV-09-251-EFS

MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS  
PURSUANT TO PLAINTIFFS'  
THIRD, FOURTH, AND FIFTH SET  
OF REQUESTS FOR PRODUCTION

EVA LAUBER, DANE SCOTT,  
SCOTT BOOLEN, JOEL FINCH and  
all other similarly situated,

Plaintiffs

v.

ENCORE CAPITOL GROUP, INC. *et.*  
*al.*

Defendants

MEMORANDUM ON SUPPORT OF  
MOTION TO COMPEL 3rd, 4th, & 5th  
REQUESTS FOR PRODUCTION - 1 -

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I. Summary of Requests/Motion

Plaintiff is requesting that the court Order the Suttell defendants to produce:

A. JST Notes related to Attorney fee affidavits, RFP 38, 39, 40 (Ct. Rec. 218), the JST Notes that correspond to the seven Layman affidavits of attorney fees produced by the Suttell Defendants (Ct. Rec. 156-1) and the JST notes for a Karen Hammer Affidavit for fees that Plaintiffs were able to locate (Ct. Rec. 140-2). Plaintiffs need the JST notes to evaluate the claims of time spent made in those affidavits.

B. JST Notes related to Spiegel Statute of Limitations, RFP 41 (Ct. Rec. 218-5). JST notes for the Spiegel cases identified by the defendants (approximately 265) (which would show dates of last payment and dates of filing lawsuit according to defendants' records). The JST notes include information which Defendant claims show date of last payment and show the date the case was filed. This information is need for a statute of limitations analysis.

C. Detailed Declarations of Attorney Fees filed by Suttell Defendants in Washington courts, Interrogatory 13, RFP 7, RFP 23. Defendants only produced seven declarations, all from Patrick Layman. Plaintiffs located an additional detailed declaration of Karen Hammer in the court files. Defendants continue to refer to these affidavits as part of their "historical analysis" of the amount of the fee they unilaterally determined was "fair" (as opposed to "reasonable").

1 II. JST Collectors' Notes Related to Suttell Attorney Fee Declarations  
2 (RFP 38, 39 & 40)

3 Defendant Suttell & Hammer, P.S. uses the JST software to manage its  
4 collection system. (Ct. Rec. 140-1, p.10, ln. 21). The JST software creates a date  
5 and time stamped log of events related to each collection case which detail all the  
6 preparation of documents and actions in the case (except for the attorneys). *See*  
7 (Ct. Rec. 139-3, *Kelli Gray JST Notes*).

8  
9 The Plaintiffs' Third (RFP # 38 & 39), Fourth (RFP # 40)<sup>1</sup> and Fifth (RFP #  
10 41) set of requests for production are JST notes related to the few collection cases  
11 in which Suttell filed detailed declarations for attorney's fees (seven for Layman  
12 (Ct. Rec. 156-1), one for Karen Hammer (Ct. Rec. 140-2)). The Plaintiffs intend to  
13 compare the time stamped JST notes with the detailed attorney fee declarations.  
14 Defendant Suttell & Hammer, P.S. refuses to produce the times stamped JST notes.  
15

16  
17 On November 8, 2010, Plaintiff served Defendant Suttell & Hammer, P.S.  
18 with the Third Set of Requests for Production (RFP #'s 38 & 39). (Ct. Rec. 218-1,  
19 p.6). The Suttell Defendants response was due on December 8, 2010 and the  
20 Defendant did not timely respond or object. (Ct. Rec. 218, p.2). *See Burlington*  
21

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22  
23 <sup>1</sup> The Defendant did not preserve the Plaintiffs' consecutive RFP numbering  
24 system in its responses. Requests for Production 40 and 41 are both incorrectly  
25 numbered 38 in the Defendant's Responses.

1 *Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142,  
2 1149 -1150 (2005) (waiver of objections). On February 3, 2011, Defendant Suttell  
3 & Hammer, P.S. promised to respond to the RFP by February 7, 2011.  
4

5 On February 7, 2011, the Suttell Defendants served Plaintiffs with its  
6 response but refused to produce anything, instead making the same objections  
7 rejected by the court in its February 4, 2011 Order. (Ct. Rec. 205, *Order*; Ct. Rec.  
8 218-2, 4 & 6, *Discovery Response*).  
9

10 Since June 10, 2010, the Plaintiff has been requesting that Defendant Suttell  
11 & Hammer, P.S. produce time records or explanation of how it arrived at its claims  
12 for fees and any “procedures reasonably designed to avoid any such error.” 15  
13 USC § 1692k(c). On September 7, 2011 Defendant Suttell & Hammer, P.S.  
14 responded that it does not keep contemporaneous time records, but requests  
15 attorney’s fees based on a “historical analysis.” (Ct. Rec. 218, p.61, ln. 14, *RFP #*  
16 *7*; p. 69, ln. 9-15, *RFP # 23*).  
17  
18

19 On February 7, 2011, Defendant produced a narrative of the memories of  
20 William Suttell and Karen Hammer as its “historical analysis” and stated that there  
21 is no actual evidence of any “historical analysis.” (Ct. Rec. 212-1, p. 6). The  
22 narrative “historical analysis” claims that Suttell determined that based on “the  
23 average amount of time it would take to accomplish various tasks.” (Ct. Rec. 212-  
24  
25

1, p. 6, ln. 7-8). No information beyond the belief of Mr. William Suttell is offered to support what the “average time” of “various tasks” may be.

The JST collector’s notes show at least what time the non-lawyers (who performed almost all of the tasks) spent. (Ct. Rec. 139-3, *Kelli Gray JST Notes*).

The so-called historical analysis also argues that a factor was that on the rare occasion that a fee declaration was produced, courts did not object so the fee must be fair. The JST collector’s notes matching these declarations will show the actual time spent by non-lawyer employees.

### III. JST Notes related to Spiegel Statute of Limitations, RFP 41. JST notes for the Spiegel cases identified by the defendants

RFP 41 requests production of the JST notes for each of the Spiegel cases identified by the Defendant. (Ct. Rec. 218-5, p. 44). Defendant Suttell & Hammer did not timely respond or object to RFP 41 (due December 29, 2010). (Ct. Rec. 218, p. 3, ln. 6-18). On February 3, 2011, Defendant agreed to respond no later than February 7, 2011. On February 7, 2011, Defendant responded with the same objections rejected by the court in its February 4, 2011 Order, and produced nothing (Ct. Rec. 218-6, p. 52).

The JST software states the alleged date of last payment and the date that Suttell served and filed the state court lawsuits. *See* (Ct. Rec. 139-3, *Kelli Gray JST Notes*). With this information the Plaintiff will be able to determine the alleged

1 date the statute of limitation began to run (date of last payment) and the date the  
 2 lawsuit was filed for each Spiegel case. This information directly relates to  
 3 Plaintiff's UCC-2 four year statute of limitation class allegations.  
 4

5 RFP 41 also relates to the attorney fee issue. The Spiegel JST notes will  
 6 show also the actual time spent by non-lawyer employees performing "various  
 7 tasks" and provide a sufficient sample size to determine what the "average time"  
 8 performing those tasks may be.  
 9

10 IV. Suttell declarations of Attorney Fees, Interrogatory 13, RFP 7, RFP 23,  
 11

12 On June 10, 2010, Plaintiff Gray served the Second Set of Interrogatories  
 13 and Requests for Production requesting:

14 INTERROGATORY NO. 13. Please list all cases in which an affidavit of attorney  
 15 fees that details date, time spent, service (description) was specifically listed in detail and  
 16 provide: the name of the parties, address of the defendant, phone number of the  
 17 defendant, the jurisdiction (which court), the case name, the case number, the disposition,  
 18 the amount of any judgment obtained, the amount of any judgment paid, the Suttell  
 19 account or file number, the identity of the original creditor.

20 (Ct. Rec. 140-1, p. 9, ln. 1-5).

21 REQUEST FOR PRODUCTION #7. Please produce all documents that relate to  
 22 contemporaneous attorney time keeping, time keeping, determination of time spent, or  
 23 billing records, fee agreement, related to all persons against whom Suttell claimed an  
 24 attorney fee of Six Hundred and Fifty Dollars (\$650.00) at or before a motion for default  
 25 was filed together with all documentation regarding when the record was created and by  
 whom in a Court of the State of Washington from August 12, 2005 to the present, in a  
 lawsuit to collect a debt.

(Ct. Rec. 218-7, p. 61, ln. 1-5).

1 REQUEST FOR PRODUCTION #23. Please produce all documentation relied on  
2 to determine and/or set the attorney fee rate customarily charged in a locality in which an  
3 attorney of Suttell has requested an attorney fee from August 12, 2005 to the present.

4 (Ct. Rec. 218-7, p. 69, ln. 6-8)

5 On September 7, 2011, Suttell & Associates, P.S. responded by citing the  
6 “historical analysis” and producing seven detailed attorney fee declarations signed  
7 by Patrick Layman. (Ct. Rec. 140-1, p. 9, ln. 1-5; Ct. Rec. 218-7, p. 69, ln. 6-8).  
8  
9 The response was incomplete.

10 On November 20, 2008, Karen Hammer filed a detailed attorney fee  
11 declaration in *Midland Funding, LLC v. Eric M. Winn*, King County Superior  
12 Court Case No.: 08-2-39359-SEA. (Ct. Rec. 140-2). The Karen Hammer  
13  
14 declaration was not produced by the Defendants. The declaration was discovered  
15 by the Plaintiff while reviewing randomly selected court files. The Plaintiff  
16 requests the Court order the Defendant to produce *all* of the detailed time  
17  
18 declarations of the Suttell attorney’s.

19 Dated this the 11<sup>th</sup> day of February, 2011

20  
21 *Michael D. Kinkley, P.S.*

22  
23 /s Scott M. Kinkley

24 Scott M. Kinkley  
25 Attorney for Plaintiff  
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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of February, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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